
FINAL NOTICE

To: **Coöperatieve Centrale Raiffeisen–Boerenleenbank B.A.
(‘Rabobank’)**

Address: One Queenhithe, London, EC4V 3RL

Reference Number: 171596

Date: 29 October 2013

1. ACTION

- 1.1. For the reasons given in this Final Notice, the Authority hereby imposes on Coöperatieve Centrale Raiffeisen–Boerenleenbank B.A. (‘Rabobank’) a financial penalty of £105 million.
- 1.2 Rabobank agreed to settle at an early stage of the Authority’s investigation. Rabobank therefore qualified for a 30% (stage 1) discount under the Authority’s executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £150 million on Rabobank.

2. SUMMARY OF REASONS

- 2.1 The London Interbank Offered Rate ("LIBOR") is a benchmark reference rate that is fundamental to the operation of both the UK and international financial markets, including markets in interest rate derivatives contracts. The integrity of benchmark reference rates (such as LIBOR) is therefore of fundamental importance to the UK and international financial markets.
- 2.2 Rabobank breached Principles 2 and 3 of the Authority's Principles for Businesses between May 2005 and August 2012 (the "Relevant Period") and Principle 5 between May 2005 and January 2011. In order to improve the profitability of trading positions Rabobank, through its Managers and employees, sought to manipulate the published JPY, USD and GBP LIBOR rates between May 2005 and January 2011 in the following ways:
- (1) manipulation of the bank's own rates that formed part of the calculation of the published JPY, USD and GBP LIBOR rates;
 - (2) collusion with interdealer brokers ("Brokers") in attempts to influence the JPY LIBOR submissions of other Panel Banks; and
 - (3) collusion with JPY and USD LIBOR Panel Banks directly.
- 2.3 Although the Authority has not identified any documented evidence of attempts by Rabobank Traders or Submitters to manipulate LIBOR after January 2011, Rabobank did not explicitly have a policy in place to address LIBOR submissions procedures until 30 March 2011, and certain LIBOR-related compliance risks were not addressed until August 2012.
- 2.4 Rabobank's misconduct undermined the integrity of those benchmark reference rates.

Principle 5 breaches

Attempts to manipulate JPY, USD and GBP LIBOR rates

- 2.5 Between May 2005 and January 2011, Rabobank acted improperly and breached Principle 5 by failing to observe proper standards of market conduct. Certain Rabobank LIBOR submitters (who were primarily money markets traders and located in the bank's London and Utrecht offices) ("Submitters") routinely took trading positions in interest rate derivatives into account when making JPY, and to a lesser extent, USD and GBP LIBOR submissions. Certain Rabobank employees also sought to influence the JPY and USD LIBOR submissions of other Panel Banks. This misconduct took a number of forms.
- (a) Manipulation of Rabobank's own submissions*
- 2.6 Certain Rabobank derivatives and money markets traders (collectively, "Traders") routinely made requests to Rabobank Submitters to adjust their submissions to benefit trading positions ("Internal Requests"). From May 2005 to November 2010, Rabobank Traders made at least 508 documented Internal Requests in relation to JPY, USD and GBP LIBOR. This included:

- (1) At least 384 documented Internal Requests in relation to JPY LIBOR. (One JPY Trader described himself as "*setting libors for rabo*", and a JPY LIBOR Submitter assured that same Trader that "*I would never change libors without consulting you*" and "*we are on the same team*".)¹
 - (2) At least 112 documented Internal Requests in relation to USD LIBOR. (A Manager noted in relation to another Trader who made Internal Requests of the USD LIBOR Submitters, that he was "*fast turning into [that Trader's] bitch!!!!*".)²
 - (3) At least 12 documented Internal Requests in relation to GBP LIBOR.³
- 2.7 At least 26 individuals, seven of whom were Managers, were directly involved in, these Internal Requests. Two other Managers ought to have known of, and stopped, the Internal Requests made by individuals who reported to them.
 - 2.8 In addition, Traders frequently discussed their trading positions with Submitters and made Internal Requests orally. One USD Trader noted on 17 September 2008 that Traders were used to "*help[ing] ourselves to the libors*".
 - 2.9 Certain Submitters also influenced the submissions they made to suit trading positions they took in their capacities as money markets traders.
 - 2.10 Given the widespread and routine nature of making JPY, and to a lesser extent, USD and GBP, Internal Requests and the nature of the control failures identified in this Notice, every other LIBOR submission in currencies and tenors in which Rabobank submitted were at risk of having been improperly influenced.

(b) Manipulation in collusion with other Panel Banks and Brokers

- 2.11 Rabobank colluded with individuals from other Panel Banks to make submissions in relation to JPY and USD LIBOR that benefited trading positions ("External Requests"). From June 2005 to October 2008, at least one Rabobank Trader and one Rabobank Submitter made at least 12 documented External Requests to at least two individuals from one other Panel Bank.
- 2.12 Rabobank also took into account requests made by individuals from other Panel Banks to make submissions in relation to JPY LIBOR ostensibly for the benefit of the trading positions of those Panel Banks. From June 2006 to October 2008, at least one Rabobank Submitter took into account at least seven documented requests from at least two individuals at two other Panel Banks.
- 2.13 In addition, Rabobank colluded with Brokers to attempt to influence the JPY LIBOR submissions of other Panel Banks ("Broker Requests"). The Brokers were in regular contact with the various Panel Banks that contributed JPY LIBOR submissions. From May 2009 to January 2011, at least one Rabobank Trader made at least 12 JPY LIBOR Broker Requests to at least four Brokers at two broker firms ("Broker Firms").

¹ The documented JPY LIBOR Internal Requests occurred between at least September 2005 and November 2010.

² The documented USD LIBOR Internal Requests occurred between at least May 2005 and June 2008, although additional oral requests to influence USD LIBOR submissions may have been made until at least December 2008.

³ The documented GBP LIBOR Internal Requests occurred between at least November 2007 and February 2009.

- 2.14 Rabobank also took into account requests from Brokers to make submissions in relation to JPY LIBOR to benefit the Brokers' clients at other Panel Banks. From July 2008 to September 2008, at least one Rabobank Submitter took into account at least 14 documented requests from one Broker at one Broker Firm.

Management directives

- 2.15 From 2009 to November 2010, Rabobank specifically instructed its JPY LIBOR Submitters to seek market colour from certain JPY Traders to inform their LIBOR submissions. This created the risk that Traders who had significant derivatives trading positions would improperly seek to influence those JPY LIBOR Submitters. This risk was aggravated by the fact that certain JPY LIBOR Submitters took the instruction to seek market colour to be a direction to obtain and make LIBOR submissions at levels suggested by Traders, including Traders who, in practice, exploited their roles by making suggestions that directly benefitted trading positions.
- 2.16 In total, 26 individuals, seven of whom were Managers, were directly involved in, or aware of, these improper requests. Two other Managers ought to have known of, and stopped, the Internal Requests made by individuals who reported to them.
- 2.17 Further, the practice of attempting to manipulate LIBOR submissions to benefit trading positions was also conducted between individuals in open conversations, chat forums and group emails.

Motive

- 2.18 Rabobank Traders sought to manipulate LIBOR in order to improve the profitability of trading positions.

Impact of the conduct

- 2.19 Rabobank's breaches of Principle 5 were extremely serious. Its misconduct gave rise to a risk that the published LIBOR rates would be manipulated and undermined the integrity of those rates. In addition to Rabobank's routine internal manipulation of its own JPY, and to a lesser extent, USD and GBP LIBOR submissions, Rabobank's collusion with other Panel Banks and Brokers significantly increased the risk of manipulation of published LIBOR rates, because the averaging process applied to submissions as part of the calculation of the published rate meant that the risk of manipulation was greater when more than one Panel Bank's submissions had been manipulated.

Principle 3 breaches

Systems and controls failings

- 2.20 Rabobank breached Principle 3 during the Relevant Period by failing to take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems, in relation to its LIBOR submissions process. The duration and extent of Rabobank's misconduct was exacerbated by these inadequate systems and controls.
- 2.21 Although between May 2005 and 30 March 2011 Rabobank had in place general policies and procedures concerning compliance standards and which required, amongst other things, staff to act with integrity, it did not have in place any specific systems, controls or policies governing the procedure for making LIBOR submissions despite: (i) commentary by the Wall Street Journal in 2008 noting

the risk of derivatives traders' influence; (ii) the amended BBA Guidance in 2009 which specifically noted that derivatives traders should not be involved in the submission process; and (iii) concerns raised by a regulator in 2010 relating to USD LIBOR submissions.

- 2.22 Further, between May 2005 and August 2012, certain Submitters carried out trading in derivatives products referenced to LIBOR. Although there was an inherent conflict of interest in allowing Submitters to trade such products, Rabobank did not expressly prohibit its Submitters from trading derivatives products for purposes other than hedging cash positions until August 2012.
- 2.23 From 2009 to November 2010, Rabobank also specifically instructed its JPY LIBOR Submitters to seek market colour from certain JPY Traders to inform their LIBOR submissions. This created the risk that Traders who had significant derivatives trading positions would improperly seek to influence those JPY LIBOR Submitters. This risk was aggravated by the fact that certain JPY LIBOR Submitters took the instruction to seek market colour to be a direction to obtain and make LIBOR submissions at levels suggested by Traders, including Traders who, in practice, exploited their roles by making suggestions that directly benefitted trading positions.
- 2.24 Rabobank also located Traders in close proximity with Submitters. This created an obvious risk that Traders would seek to influence Submitters to make submissions to benefit trading positions. Rabobank took no steps to mitigate this risk until July 2012.
- 2.25 Accordingly, throughout the Relevant Period, Rabobank management failed to manage the relevant business areas appropriately. In fact, as noted above, a number of Rabobank Managers knew about (and in some cases were actively involved in) attempts to manipulate LIBOR submissions.
- 2.26 It was not until 30 March 2011 that Rabobank implemented systems and controls to explicitly govern its procedures for making LIBOR submissions. Even then, Rabobank failed to take steps sufficient to prevent Submitters from trading derivatives products linked to the very rates they submitted for the bank, other than for the purposes of hedging cash positions.

Principle 2 breaches

Submission of inaccurate attestation to the Authority and failure to address concerns identified by the Internal Audit

- 2.27 Despite the fact that Rabobank's Principle 3 breaches continued until August 2012, on 18 March 2011, Rabobank attested to the Authority that its LIBOR-related systems and controls were "*fit for purpose*." Although Rabobank's work on its LIBOR policy was largely complete by the time it gave its attestation, and the Authority does not conclude that Rabobank deliberately misled the Authority, the attestation was inaccurate because at the time of the attestation, Rabobank had: (i) not yet formally implemented its LIBOR submissions policy (nor disseminated the final policy to its employees or trained them on it); (ii) failed to address the inherent conflict that exists when a Panel Bank allows its submitters to trade interest rate derivatives products linked to the very LIBOR rates for which they are responsible; and (iii) failed to address the need to retain sufficient records to allow the bank to properly audit its LIBOR submissions.

- 2.28 Further, between March and April 2009, Rabobank's internal audit group ("Internal Audit Group") carried out an audit within the bank's Global Liquidity and Finance Group ("GL&F Group"), the group in which Submitters and certain Traders were located. Although the focus of the audit was not on the bank's LIBOR submissions process, Internal Audit was advised by a JPY LIBOR Submitter that JPY LIBOR submissions were based on the almost daily LIBOR suggestions that Trader 1 provided. Despite noting this practice in its working papers, Internal Audit failed to assess and address the issue effectively.

3. DEFINITIONS

- 3.1. The following principal definitions are used in this Final Notice.

"Broker" means an interdealer broker who acted as intermediary in, amongst other things, deals for funding in the cash markets and interest rate derivative contracts. Two Brokers are referred to in this Notice, Brokers 1 and 2.

"Broker Firm" means the employer of a Broker. Brokers 1 and 2 worked at two different Broker Firms.

"External Submitter" means an employee of a Panel Bank, other than Rabobank, who had responsibility for making LIBOR submissions for a Panel Bank. One External Submitter is referred to in this Notice, External Submitter 1.

"Manager" means a Rabobank employee with direct line management responsibility over Traders or Submitters or other non-trading personnel, for example, for example, the head of a trading desk. Three Managers are referred to in this Notice, from Manager 1 to 3.

"Panel Bank" means a bank with a place on the BBA panel for contributing LIBOR submissions in one or more currencies.

"Submitter" means a Rabobank employee who had responsibility for making LIBOR submissions for the bank. Eight Submitters are referred to in this Notice, from Submitter A to H.

"Trader" means a Rabobank employee trading interest rate derivatives or in the money markets. Five Traders are referred to in this Notice, from Traders 1 to 5.

- 3.2 The following further definitions below are used in this Final Notice:

"Act" means the Financial Services and Markets Act 2000.

"Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority.

"Authority's Handbook" means the Authority's Handbook of rules and guidance.

"BBA" means the British Bankers' Association.

"BBA FX&MM Committee" means Foreign Exchange and Money Markets Committee, which has the sole responsibility for all aspects of the functioning and development of LIBOR.

"Broker Request" means a request by a Rabobank employee to collude with Brokers to attempt to influence the LIBOR submissions of other Panel Banks.

“DEPP” means the Authority’s Decision Procedure & Penalties Manual.

“External Request” means a request by a Rabobank employee to collude with individuals at Panel Banks to make LIBOR submissions that benefited trading positions.

“ENF” means the Authority’s Enforcement Manual.

“GBP” means pound sterling.

“Internal Request” means a communication by a Rabobank Trader to a Rabobank Submitter, requesting the Submitter to adjust their submissions to benefit trading positions.

“JPY” means Japanese yen.

“LIBOR” means London Interbank Offered Rate.

“OTC” means over-the-counter, as in OTC derivatives.

“Rabobank” means Coöperatieve Centrale Raiffeisen–Boerenleenbank B.A. (a/k/a Rabobank International).

“Rabobank’s GL&F Group” or “GL&F Group” mean Rabobank’s Global Liquidity & Finance Group.

“Rabobank Internal Audit” or “Internal Audit” mean Rabobank’s internal audit group (known as Audit Rabobank Group).

“Relevant Period” means May 2005 to August 2012.

“Tribunal” means the Upper Tribunal (Tax and Chancery Chamber).

“USD” means US dollar.

4. FACTS AND MATTERS

4.1 This Notice sets out facts and matters relevant to the following:

- (1) LIBOR background. (See Paragraphs 4.2 to 4.8.)
- (2) Attempts to manipulate JPY, USD and GBP LIBOR rates. (See Paragraphs 4.9 to 4.30.)
 - a. Internal requests to Submitters. (See Paragraphs 4.10 to 4.15.)
 - b. Manager involvement in Internal Requests to Submitters. (See Paragraphs 4.16 to 4.19.)
 - c. Solicitation of requests from Traders by Submitters. (See Paragraphs 4.20 to 4.22.)
 - d. Collusion with Panel Banks. (See Paragraphs 4.23 to 4.27.)
 - e. Collusion with Brokers. (See Paragraphs 4.28 to 4.30.)

- (3) Lack of appropriate systems and controls in relation to LIBOR.
(See Paragraphs 4.31 to 4.39.)
 - a. Absence of systems and controls until 30 March 2011.
(See Paragraphs 4.31 to 4.32.)
 - b. Trader-Submitter conflict of interest. (See Paragraphs 4.33-4.34.)
 - c. Management directives. (See Paragraphs 4.35.)
 - d. Failure of management oversight. (See Paragraphs 4.36-4.37.)
 - e. Failures in the policies and procedures Rabobank ultimately implemented to address LIBOR concerns.
(See Paragraphs 4.38 to 4.39.)
- (4) Submission of inaccurate attestation to the Authority
(See Paragraphs 4.40-4.46.)
- (5) Failure to address concerns highlighted by Internal Audit.
(See Paragraphs 4.45 to 4.51.)

LIBOR background

- 4.2 LIBOR is the most frequently used benchmark for interest rates globally, referenced in transactions with a notional outstanding value of at least USD 500 trillion.
- 4.3 LIBOR is currently published for five currencies (such as JPY, USD and GBP) and seven maturities (such as one, three and six months).⁴ However, the large majority of financial contracts use only a small number of currencies and maturities. JPY, USD and GBP LIBOR are widely used currencies.
- 4.4 LIBOR is published on behalf of the BBA.⁵ LIBOR (in each relevant currency) is set by reference to the assessment of the interbank market made by a number of Panel Banks selected by the BBA. Each Panel Bank contributes rate submissions each business day.
- 4.5 These submissions are not averages of the relevant Panel Banks' transacted rates on a given day. Rather, when making these submissions, the BBA requires Panel Banks to exercise their subjective judgement in evaluating the rates at which money may be available in the interbank market when determining submissions.
- 4.6 The definition of LIBOR sets out the precise nature of the judgement required from Panel Banks. Since 1998, that definition has been: *"The rate at which an individual contributor panel bank could borrow funds, were it to do so by asking for and then accepting interbank offers in reasonable market size just prior to 11:00 London time."*⁶ The definition requires submissions related to funding from the Panel Banks. The definition does not allow Panel Banks to consider factors unrelated to borrowing or lending in the interbank market.

⁴ During the Relevant Period, LIBOR was published for ten currencies and fifteen maturities.

⁵ During the Relevant Period, bbaLibor was the legal entity sponsoring LIBOR. The "BBA FX and MM Committee" was responsible for the functioning and development of bbaLibor.

⁶ This definition is published and available to participants in the UK and international financial markets. (See <http://www.bbalibor.com/bbalibor-explained/definitions>.)

- 4.7 Interest rate derivative contracts typically contain payment terms that refer to benchmark rates. LIBOR is by far the most prevalent benchmark rate used in OTC interest rate derivatives contracts and exchange-traded interest rate contracts.
- 4.8 During the Relevant Period, Rabobank delegated responsibility for making LIBOR rate submissions to money markets traders in the bank's GL&F Group. These individuals (Submitters) were responsible for managing Rabobank's liquidity by, among other things, acquiring cash for the bank and entering into interest rate derivatives contracts to hedge the bank's liquidity risk. They were also, to a limited extent, allowed to enter into interest rate derivatives contracts (referenced to LIBOR) for profit.

Attempts to manipulate JPY, USD and GBP LIBOR rates

- 4.9 Certain Rabobank Submitters routinely took Rabobank's positions in interest rate derivatives into account when making the bank's JPY, and to a lesser extent, USD and GBP LIBOR submissions. Rabobank also sought to influence the JPY and USD LIBOR submissions of other Panel Banks. This misconduct took a number of forms.

Internal Requests to Submitters

- 4.10 Rabobank Traders routinely made Internal Requests to Rabobank Submitters. From May 2005 to November 2010, they made at least 508 documented Internal Requests in relation to JPY, USD and GBP LIBOR. This included:
- (1) At least 384 documented Internal Requests in relation to JPY LIBOR. (One JPY Trader described himself as *"setting libors for rabo"*, and a JPY LIBOR Submitter assured that same Trader that *"I would never change libors without consulting you"* and *"we are on the same team"*.)
 - (2) At least 112 documented Internal Requests in relation to USD LIBOR. (One USD Trader noted on 17 September 2008 that Traders were used to *"help[ing] ourselves to the libors"*, and a Manager noted in relation to another Trader who made Internal Requests of the USD LIBOR Submitters, that he was *"fast turning into [that Trader's] bitch!!!!"*.)
 - (3) At least 12 documented Internal Requests in relation to GBP LIBOR.
- 4.11 In addition, Traders frequently discussed their trading positions with Submitters and made Internal Requests orally.
- 4.12 Certain Submitters also on occasion influenced the submissions they made to suit trading positions they took in their capacities as money markets traders.
- 4.13 At least 26 individuals were directly involved in Internal Requests. This includes seven Managers, who received or were otherwise aware of at least 23 JPY LIBOR, 21 USD LIBOR and 11 GBP LIBOR documented Internal Requests. Two other Managers ought to have known of, and stopped, the Internal Requests made by individuals who reported to them.
- 4.14 Examples of improper Internal Requests are set out below:
- (1) On 15 September 2006, Trader 2 asked Submitter A for the *"USUAL FAVOURS, CAN YOU KEEP 3S AT 39 FOR THE NEXT FEW DAYS PLS MATE."*

Submitter A replied, *"will do"*, and then proceeded to keep three month USD LIBOR at 5.39 until 21 September.

- (2) On 2 November 2006, Trader 3 emailed Submitter B, requesting a *"low"* 6 month JPY LIBOR submission. Submitter B replied *"no prob"* and even asked *"how does 52 sound?"*, which was Rabobank's six month JPY LIBOR submission for the day.
- (3) On 14 February 2007, Trader 3 asked Submitter C, *"Can you keep your 6m yen libor at 0.62 today if poss as have a large fixing today?"* Submitter C replied, *"sure will do mate."* Rabobank's six month JPY LIBOR submission was consistent with this request.
- (4) On 4 August 2008, Trader 4 emailed to Submitter B, saying: *"GOOD MORNING. PLEASE SET TODAY'S 6MTH [JPY] LIBOR AT 0.96 I HAVE A CHUNKY FIXING . . . THANKS FOR YOUR HELP."* Submitter B replied, *"NO WORRIES MATE"*, and as requested made a six month JPY LIBOR submission of 0.96.
- (5) On 21 August 2008, Trader 1 emailed four of the bank's Submitters (Submitters A, B, C and D), asking for a *"6m [JPY] LIBOR at 0.92% for today please?"* Trader 1 then chased Submitter B to ensure Submitter B made that submission, which Submitter B did:

Submitter B: [Trader 1] *you're ringing about six month Yen LIBOR again aren't you?*

Trader 1: *Yes, yes, yeah*

Submitter B: *That's all you're, that's all you care about for the moment, isn't it?*

Trader 1: [Laughs.]

Submitter B: *I saw an email from you . . . as well.*

Trader 1: *Oh, OK, OK.*

Submitter B: *We'll make sure your six month Yen LIBOR goes in where you want it, don't worry.*

Trader 1: *Thank you very much mate, yeah.*

- (6) On 9 January 2009, Submitter E told Submitter F (who was making the bank's GBP LIBOR submissions on that day) that they *"Need low 1m and 3m [GBP LIBOR] today pls"*. Submitter F complied, moving the bank's three month GBP LIBOR submission down from 2.50 to 2.37 and six month GBP LIBOR submission down from 1.80 to 1.74.
- (7) On 2 February 2010, Trader 1 asked Submitter G *"cud u put .the 6m [JPY] libor at 0.46 for today pls?"* Submitter G complied and made a 0.46 six month JPY LIBOR submission that day.

4.15 It was unusual for Rabobank Submitters not to take Internal Requests into account, particularly when making JPY, and to a lesser extent, USD and GBP LIBOR submissions. This is demonstrated, for example, by the strength of a USD Trader's reaction on 17 September 2008 when, this had not occurred. Trader 5 stated: *"[B]asically we used to obviously, help ourselves to the libors [for which] we're on the panel . . . [Submitter D] fucked me over the libors yesterday and*

there was no need, [Submitter D] had nothing in it. Could have got away with something different, [Submitter D] knew exactly what I needed . . . [Submitter D] fucked me up so [Submitter D's] got to go down to it mate and it killed . . . me this morning."

Manager involvement in Internal Requests to Submitters

- 4.16 Traders also made Internal Requests to Managers. Below are examples of Internal Requests that Managers received:

- (1) On 6 October 2006, Trader 2 wrote to Manager 1, stating, *"HELLO SKIPPER, CAN U PUT 3S AT 37 FOR ME TOMORROW PLS . . . MANY THANKS."* Manager 1 replied: *"NEVER IN DOUBT!"* Rabobank made a 5.37 three month USD LIBOR submission on 7 October.
- (2) On 1 December 2006, after receiving a number of USD LIBOR requests from Trader 2, Manager 1 joked that he was *"fast turning into [Trader 2's] LIBOR bitch!!!!"*
- (3) On 13 August 2007, Trader 2 told Submitter A, who reported to Manager 1, that Trader 2 would need *"a frickin high 6 mth fix tomorrow [14 August],"* and therefore wanted Rabobank to make a six month USD LIBOR submission of *"5.42."* On 14 August, Manager 2: followed-up with Manager 1:

Manager 2: *any feeling for libors today? specifically 6mth*

Manager 1: *hi 1, 2, 3 month . . . 59, 56, 53.5 . . . 6 month 42, I think thats what [Trader 3] needs*

Manager 2: *it's actually me that needs it, but thanks*

Manager 1: *ahh [Trader 3], taking all the credit!!*

Manager 2: *Typical*

- 4.17 In addition to Managers 1 and 2, seven other Managers were aware, or should have been aware, of the practice of attempting to manipulate submissions to benefit trading positions. For example, on 9 December 2008, Manager 3 asked Manager 1 and Submitter C to explain how Submitter H was determining the bank's daily LIBOR submissions. Submitter C replied, *"[T]he yen libors sometimes [Trader 1] will email from Tokyo to ask for any special requests."*
- 4.18 Rabobank designated certain Traders as "Centres of Competence" Traders on the basis that those Traders had extensive experience, market knowledge and expertise in cash instruments for a particular currency, because, in part, they had overall responsibility for managing the net risk arising from all Rabobank's transactions in a particular currency.
- 4.19 From 2009 to November 2010, Rabobank Managers specifically instructed JPY LIBOR Submitters to seek market colour from these Centres of Competence Traders. That instruction was given to provide Submitters with the benefit of the Traders' expertise in JPY cash trading. However, this instruction also created a risk that the Traders who had significant derivatives trading positions would improperly seek to influence those JPY LIBOR Submitters. This risk was aggravated by the fact that certain JPY LIBOR Submitters took the instruction to seek market colour to be a direction to obtain and make LIBOR submissions at levels suggested by Traders, including Traders who, in practice, exploited their roles by making suggestions that directly benefitted trading positions.

Solicitation of requests from Traders by Submitters

- 4.20 In fact, certain of these Traders viewed themselves as the bank's *de facto* JPY LIBOR Submitters. For example, when, on 14 December 2010, a Broker asked Trader 1 whether Trader 1 *"set the libors for the bank,"* Trader 1 (who had never been a Submitter) replied, *"Till two weeks ago i was setting libors for rabo but due to BBA investigation someone outside of europe shudnt have any influence on libors then I cudnt be invol[v]ed in libors after then."*
- 4.21 The bank's JPY LIBOR Submitters also actively solicited requests from these Traders, saying such things as, they would *"input whatever you want"*. On occasion, Submitters also made additional rate adjustments.
- 4.22 In an exchange between Trader 1 and Submitter H on 18 October 2010, Submitter H assured Trader 1 that *"I would never change libors without consulting you"* and that *"we are on the same team"*. This inappropriate behaviour is consistent with the practice described above in paragraph 4.19, and which involved JPY LIBOR Submitters making LIBOR submissions at levels suggested by Traders, including Traders who, in practice, exploited their roles by making suggestions that directly benefitted trading positions.

Collusion with other Panel Banks

- 4.23 From June 2005 to October 2008: (i) at least one Rabobank Trader and one Rabobank Submitter made at least 12 documented External Requests to at least two individuals from one other Panel Bank; and (ii) at least that same Submitter also took into account at least seven documented requests from at least two individuals at two other Panel Banks. Broken down by currency, Rabobank made at least ten documented JPY LIBOR and at least two documented USD LIBOR External Requests to at least one other Panel Bank and received at least seven documented JPY LIBOR requests from at least that same Panel Bank as well as one other Panel Bank.
- 4.24 This was part of a collusive effort to manipulate the published JPY and USD rates.
- 4.25 For example, on 19 March 2008, Trader 1 asked Submitter B to raise the bank's six month JPY LIBOR submission from 1.02 to 1.10. Not only did Submitter B oblige by making a 1.10 submission for Rabobank, but Submitter B also reached out to a LIBOR submitter at another Panel Bank ("External Submitter") to request that External Submitter to make a similar 1.10 submission, with the hope that they could collectively move the published JPY LIBOR rates for the day:

Submitter B: [Trader 1] *needs a high 6m libor if u can help skip – asked me to set 1.10!*

External Submitter 1 : *oops my 6s is 1.15!! [Trader 1 will] love me.*

Submitter B: *hahaha so do i!*

- 4.26 Similarly, on 22 March 2007, Submitter B emailed External-Submitter 1, stating, *"I need a high 1 mth jpy libor set tmorrow pls . . . if you can ask your man to set a nice high one like today pls? . . . hugs skip."* External Submitter 1 replied affirmatively, stating, *"I will have a word . . . it will be a case of them remembering . . . enjoy skip . . . this turn could be nasty!!! xx."* Notably, when External Submitter 1 passed along the request to their bank's other submitters, External Submitter 1 explained that *"We usually try and help each other out . . . but only if it suits . . . I think this will be OK for us anyway . . ."*

- 4.27 On occasion, at least one Rabobank Submitter (Submitter B) reciprocated by taking into account requests from at least two other Panel Banks. For example, on 7 January 2008, Submitter B asked External Submitter 1 *"what would you like me to set 1m [JPY LIBOR] mate . . . i've gone 70 so far . . . or h[i]gher."* External Submitter 1 thanked Submitter B, saying: *"thats fine..thx lad xx"*.

Collusion with Brokers

- 4.28 Rabobank also attempted to manipulate the published JPY LIBOR rates by colluding with Brokers. In particular, from May 2009 to January 2011, at least one Rabobank Trader made at least 12 documented Broker Requests to at least four Brokers at two Broker Firms; and from July 2008 to September 2008, at least one Rabobank Submitter took into account at least 14 documented requests from at least one Broker at one Broker Firm to move Rabobank's LIBOR submissions.
- 4.29 For example, on 30 November 2010, Trader 1 asked Broker 1 to influence the submissions of other Panel Banks:

Broker 1: *ok we need lower libors tomorrow yes?*
Trader 1: *Yeah . . .*
Broker 1: *ok ill work some magic for tomorrow :-)*
Trader 1: *i want 3 [and] 6m libor a lot lower . . . ? How?*
Broker 1: *we wait and see, tomorrow lower friday a little bit more. but ill do my best*
Trader 1: *Yeah . . . I think yen libors shud be lower but ppl tend to keep them higher whereas usd libors ppl looks like manipulat[iv]ely put them higher*
Broker 1: *ill work some magic tomorrow hopefully, 3m 19 6m 35*
Trader 1: *Mate . . . 3mth is already 19*
Broker 1: *mistype 18*
Trader 1: *That will be nice*
Broker 1: *ok i am on the case for u*
Trader 1: *Thank u mate*

Notably, the published three and six month JPY LIBOR rates fell the next day.

- 4.30 On 18 July 2008, Submitter B was prepared to adjust his submissions at the request of Broker 2, in what was clearly regarded as a reciprocal process:

Broker 2: *Hello mate? What you going to set your 1 month LIBOR today?*
Submitter B: *I don't know what do you reckon?*
Broker 2: *65?*
Submitter B: *I don't know. I ain't got a clue, 65. [A Trader at UBS] wants me to set 98 in the 6's.*

Broker 2: *That low yeah? What does [that Trader] want you setting 1's then?*

Submitter B: *Nothing [that Trader] hasn't told me.*

Broker 2: *65 then. That's good. Well, got someone asking here.*

Submitter B: *Oh ok.*

Broker 2: *If you can?*

Submitter B: *Do you want me to set 65?*

Broker 2: *Yeah or as low as possible basically.*

Submitter B: *Well, why didn't you say that then?*

Broker 2: *What? Well . . . you know. In a roundabout way.*

. *. . . [LAUGHING] . . .*

Submitter B: *Well, I'll set to 63 if you want.*

Broker 2: *Yeah?*

Submitter B: *Yeah.*

Broker 2: *Alright, then. Cool.*

Submitter B: *It makes no difference to me.*

Broker 2: *Alright, cool.*

Submitter B: *Alright mate.*

Broker 2: *Cheers mate.*

Submitter B: *Who's that?*

Broker 2: *It's a geezer at UBS.*

Submitter B: *Alright, well make sure [that Trader] knows.*

Broker 2: *Yeah, [that Trader] will know mate. Definitely, definitely, definitely.*

Submitter B: *You know, scratch my back, yeah, and all.*

Broker 2: *Yeah oh definitely, yeah, play the rules.*

Rabobank's one month JPY LIBOR submission was 0.63 that day.

Lack of appropriate systems and controls in relation to LIBOR

Absence of systems and controls until 30 March 2011

- 4.31 Although between May 2005 and 30 March 2011 Rabobank had in place general policies and procedures concerning compliance standards and which required, amongst other things, staff to act with integrity, it did not have in place any specific systems, controls or policies governing the procedure for making LIBOR submissions despite: (i) commentary by the Wall Street Journal in 2008 noting the risk of derivatives traders' influence; (ii) the amended BBA Guidance in 2009 which specifically noted that derivatives traders should not be involved in the submission process; and (iii) concerns raised by a regulator in 2010 relating to USD LIBOR submissions.
- 4.32 In addition, no formal training was provided to Submitters about the submissions process.

Trader-Submitter conflict of interest

- 4.33 Further, between May 2005 and August 2012, certain Submitters carried out trading in derivatives products referenced to LIBOR. Although there was an inherent conflict of interest in allowing Submitters to trade such products, Rabobank did not expressly prohibit its Submitters from trading derivatives products for purposes other than hedging cash positions until August 2012.
- 4.34 Rabobank also located Traders in close proximity with Submitters. This created an obvious risk that Traders would seek to influence Submitters to make submissions to benefit trading positions. Rabobank took no steps to mitigate this risk until July 2012.

Management directives

- 4.35 As noted in paragraph 4.19, from 2009 to November 2010, Rabobank specifically instructed its JPY LIBOR Submitters to seek market colour from certain JPY Traders to inform their LIBOR submissions. This created the risk that Traders who had significant derivatives trading positions would improperly seek to influence those JPY LIBOR Submitters. This risk was aggravated by the fact that certain JPY LIBOR Submitters took the instruction to seek market colour to be a direction to obtain and make LIBOR submissions at levels suggested by Traders, including Traders who, in practice, exploited their roles by making suggestions that directly benefitted trading positions.

Failure of management oversight

- 4.36 During the Relevant Period, Rabobank failed to manage the relevant business areas appropriately. As set out at paragraphs 4.16 to 4.19 above, seven Managers were directly involved in, or aware of, the misconduct. Two other Managers ought to have known of, and stopped, the Internal Requests made by individuals who reported to them. Indeed, at least one Rabobank Manager knew about, condoned and was actively involved in Rabobank's attempts to manipulate LIBOR submissions. That Manager took no action to prevent this practice. As a consequence, that Manager gave the impression that the bank endorsed such improper behaviour and helped to facilitate a culture of LIBOR impropriety at the bank.
- 4.37 In total, 26 individuals, seven of whom were Managers, were directly involved in, or aware of, these improper requests. Two other Managers ought to have known of, and stopped, the Internal Requests made by individuals who reported to them.

Failures in the policies and procedures Rabobank ultimately implemented to address LIBOR concerns

- 4.38 On 30 March 2011, Rabobank formally adopted a policy specifically governing its LIBOR submission process. Even then, Rabobank's systems and controls concerning its LIBOR submission processes were flawed because the bank failed to address the:
- (4) inherent conflict that exists when a Panel Bank allows its submitters to trade interest rate derivatives products linked to the very LIBOR rates for which they are responsible; and
 - (5) need to retain sufficient records to allow the bank to properly audit its LIBOR submissions.

- 4.39 It was not until June 2011 that Rabobank implemented processes that would enable it to audit its LIBOR submissions process effectively. It was not until August 2012—over a year later—that Rabobank formally prohibited its Submitters from trading interest rate derivatives products linked to the very LIBOR rates for which they are responsible, other than for the purposes of the bank's liquidity and liability management.

Submission of inaccurate attestation to the Authority

- 4.40 On 2 February 2011, the Authority asked Rabobank (as well as other Panel Banks) to *"provide an attestation as to the adequacy of the systems and controls arrangements currently in place for the determination and agreement of [. . .] LIBOR submissions."*
- 4.41 Earlier, in June 2010, prompted by a regulator's enquiries, Rabobank started looking into its USD LIBOR submissions process and subsequently began work on formalising and documenting its overall LIBOR submissions process.
- 4.42 Rabobank had not yet formalised its LIBOR submissions policy when it received the Authority's 2 February 2011 letter. Nevertheless, on 18 March 2011, Rabobank attested to the Authority that: *"As per your letter of 2nd February 2011, we can confirm that the arrangements in place for Rabobank International's LIBOR submissions are adequate and fit for purpose."*
- 4.43 Although Rabobank's work on its LIBOR policy was largely complete by the time it gave its attestation, and the Authority does not conclude that Rabobank deliberately misled the Authority, the attestation was inaccurate because at the time of the attestation, Rabobank had: (i) not yet formally implemented its LIBOR submissions policy (nor disseminated the final policy to its employees or trained them on it); (ii) failed to address the inherent conflict that exists when a Panel Bank allows its submitters to trade interest rate derivatives products linked to the very LIBOR rates for which they are responsible; and (iii) failed to address the need to retain sufficient records to allow the bank to properly audit its LIBOR submissions.
- 4.44 Rabobank should have—but did not—inform the Authority of these facts. Indeed Rabobank did not finalise its LIBOR submissions policy until 30 March 2011. Moreover, the final policy was not distributed to employees (and employees were not trained on the policy) until sometime in April 2011.
- 4.45 Even then, as explained above in paragraphs 4.38-4.39, Rabobank's policy was flawed and certain LIBOR-related compliance risks were not addressed until August 2012.
- 4.46 Accordingly, Rabobank's March 2011 attestation that the bank's LIBOR submissions process was *"fit for purpose"* was wrong and should not have been made as it was.

Failure to address concerns highlighted by Internal Audit

- 4.47 Between March and April 2009, Rabobank's Internal Audit Group carried out an audit within the bank's GL&F Group, the group in which Submitters and certain Traders were located. Although the focus of the audit was not explicitly on the bank's LIBOR submissions processes, Internal Audit was advised by a Submitter G (a JPY LIBOR Submitter) that JPY LIBOR submissions were based on the almost daily LIBOR suggestions that Trader 1 provided. Submitter G also provided

Internal Audit with an example of the information Trader 1 provided, which included precise suggestions for eight different JPY LIBOR tenors.

- 4.48 Internal Audit's notes and memoranda make clear that they were aware that: (i) *"Setting of daily LIBOR rate via pricing platform internally (jpy rates are sent from the Tokyo branch and input by the jpy trader)";* and (ii) *"[Submitter G] also inputs JPY Libor rate on behalf of the Tokyo team to the BBA as they have no access to do this. [Submitter G] provide this email."* (The email Submitter G provided to the Internal Audit showed Trader 1 making precise suggestions for eight different JPY LIBOR tenors.)
- 4.49 Despite identifying these issues in its working papers, Internal Audit did not assess and address the issues effectively. Internal Audit failed to advise senior management that JPY LIBOR submissions were being dictated by JPY Traders.
- 4.50 Internal Audit also failed to identify the inherent conflict of interest between the obligation to make LIBOR submissions in accordance with the published criteria and the responsibility for the profitability of positions.
- 4.51 These failings by Internal Audit meant that Rabobank's breaches of Principles 5 and 3 were allowed to continue.

5. FAILINGS

- 5.1. The regulatory provisions relevant to this Final Notice are referred to in Annex A.

Principle 5

- 5.2 Principle 5 of the Authority's Principles for Businesses requires that a firm must observe proper standards of market conduct.
- 5.3 Rabobank, through its Managers and employees, sought to manipulate JPY, USD and GBP LIBOR during the Relevant Period. Accordingly, Rabobank failed to observe proper standards of market conduct.
- 5.4 Rabobank routinely took trading positions into account when submitting rates that formed part of the calculation of JPY, and to a lesser extent, USD and GBP LIBOR.
- 5.5 Rabobank also acted in collusion with Brokers in attempts to influence JPY LIBOR submissions made by Panel Banks.
- 5.6 Rabobank also colluded with Panel Banks in attempts to influence their JPY and USD LIBOR submissions.
- 5.7 A number of Rabobank Managers knew about, and in some cases were actively involved in, Rabobank's attempts to manipulate LIBOR submissions to benefit trading positions. At least 26 individuals, seven of whom were Managers, were directly involved in the misconduct. Two other Managers ought to have known of, and stopped, the misconduct of those who reported to them.
- 5.8 Rabobank Traders sought to manipulate LIBOR submissions in order to improve the profitability of trading positions.

Principle 3

- 5.9 Principle 3 of the Authority's Principles for Businesses states that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- 5.10 Rabobank breached Principle 3 during the Relevant Period. It did not take reasonable care to organise and control its affairs responsibly and effectively. Nor did it have adequate risk management systems. The duration and extent of Rabobank's misconduct within the Relevant Period was exacerbated by these inadequate systems and controls.
- 5.11 During the period from May 2005 to 30 March 2011, although Rabobank had in place general policies and procedures concerning compliance standards and which required, amongst other things, staff to act with integrity, it did not have in place any specific systems, controls or policies governing its procedure for making LIBOR submissions.
- 5.12 From 2009 to November 2010, Rabobank also specifically instructed its JPY LIBOR Submitters to seek market colour from certain JPY Traders to inform their LIBOR submissions. This created the risk that Traders who had significant derivatives trading positions would improperly seek to influence those JPY LIBOR Submitters. This risk was aggravated by the fact that certain JPY LIBOR Submitters took the instruction to seek market colour to be a direction to obtain and make LIBOR submissions at levels suggested by Traders, including Traders who, in practice, exploited their roles by making suggestions that directly benefitted trading positions.
- 5.13 Management failed to manage the relevant business areas appropriately. In fact, as noted above, a number of Rabobank Managers knew about (and in some cases were actively involved in) attempts to manipulate LIBOR submissions.
- 5.14 In 2010-2011, Rabobank carried out a review of its systems for LIBOR submissions, which resulted in some new procedures in March 2011. However, the review and the new procedures were both flawed and certain LIBOR-related compliance risks were not addressed until August 2012.

Principle 2

- 5.15 Principle 2 of the Authority's Principles for Businesses states that a firm must conduct its business with due skill, care and diligence.
- 5.16 Rabobank failed to conduct its business with due skill, care and diligence when, on 18 March 2011, it attested to the Authority that the *"arrangements in place for Rabobank International's LIBOR submissions are adequate and fit for purpose"*. Although Rabobank's work on its LIBOR policy was largely complete by the time it gave its attestation, and the Authority does not conclude that Rabobank deliberately misled the Authority, the attestation was inaccurate because at the time of the attestation, Rabobank had: (i) not yet formally implemented its LIBOR submissions policy (nor disseminated the final policy to its employees or trained them on it); (ii) failed to address the inherent conflict that exists when a Panel Bank allows its submitters to trade interest rate derivatives products linked to the very LIBOR rates for which they are responsible; and (iii) failed to address the need to retain sufficient records to allow the bank to properly audit its LIBOR submissions.

- 5.17 Rabobank also failed to conduct its business with due skill, care and diligence when considering issues raised internally in relation to its LIBOR submissions. This was also a very serious breach by Rabobank of Principle 2. Between March and April 2009, Rabobank's internal audit group ("Internal Audit Group") carried out an audit within the bank's Global Liquidity and Finance Group ("GL&F Group"), the group in which Submitters and certain Traders were located. Although the focus of the audit was not on the bank's LIBOR submissions process, Internal Audit was advised by a JPY LIBOR Submitter that JPY LIBOR submissions were based on the almost daily LIBOR suggestions that Trader 1 provided. Despite noting this practice in its working papers, Internal Audit failed to assess and address the issue effectively
- 5.18 Internal Audit should have followed up on the concerns identified by its review. At a minimum, Internal Audit should have identified that the behaviour of the Trader and Submitter identified in its review was inappropriate and raised notable conflicts of interest concerns. Internal Audit also should have brought those concerns to the attention of Rabobank's compliance or legal departments or senior management.
- 5.19 Internal Audit's failures meant that misconduct at Rabobank relating to the bank's LIBOR submissions process was allowed to continue. For example, Traders continued to make Internal Requests and Submitters continued to defer to Traders' LIBOR submissions preferences until November 2010.

6. SANCTION

- 6.1 The Authority's policy on the imposition of financial penalties and public censures is set out in the Authority's Decision Procedure & Penalties Manual ("DEPP"). The detailed provisions of DEPP are set out in Annex A.
- 6.2 In determining the financial penalty, the Authority has had regard to this guidance. The Authority's current penalty regime applies to breaches which take place on or after 6 March 2010. However, most of the Relevant Period falls under the previous penalty regime, so DEPP in its pre-6 March 2010 form has been applied. The Authority has also had regard to the provisions of the Authority's Enforcement Manual ("ENF") relevant to the pre-28 August 2007 part of the Relevant Period.
- 6.3 The Authority considers the following DEPP factors to be particularly important in assessing the sanction.

Deterrence - DEPP 6.5.2G(1)

- 6.4 The principal purpose of a financial penalty is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business. The Authority considers that the need for deterrence means that a very significant fine on Rabobank is appropriate.

Nature, seriousness and impact of the breach - DEPP 6.5.2G(2)

- 6.5 Rabobank's breaches were extremely serious. They took place over a number of years and across a number of LIBOR currencies. There was a culture where the manipulation of the LIBOR setting process was pervasive. Until the end of 2008, the manipulation was conducted openly and was considered normal and acceptable business practice by a large pool of individuals.

- 6.6 At least 26 individuals, seven of whom were Managers, were directly involved in, the Internal Requests. Two other Managers ought to have known of, and stopped, the Internal Requests made by individuals who reported to them.
- 6.7 Rabobank's misconduct extended beyond Rabobank's own internal submission processes to attempts to influence the submissions of other Panel Banks, acting in collusion with Panel Banks and Brokers.
- 6.8 There were serious systemic weaknesses in the firm's systems and controls. This meant that Rabobank's misconduct continued even after the BBA had raised concerns about LIBOR submissions. While Rabobank attempted to improve its systems and controls in 2011, certain LIBOR-related compliance risks were not addressed until August 2012.
- 6.9 LIBOR is the most prevalent benchmark reference rate in a number of relevant markets, including markets in OTC derivatives contracts and futures contracts traded on exchanges such as LIFFE in London. LIBOR also has a wider impact on other markets. The integrity of benchmark reference rates such as LIBOR is of fundamental importance to both UK and international financial markets. Rabobank's misconduct threatened the integrity of those benchmarks and confidence in and the stability of the UK financial system.
- 6.10 Rabobank could have caused serious harm to other market participants if the final LIBOR fixes were affected by the actions of Rabobank's Managers and employees on any given day.

**The extent to which the breach was deliberate or reckless -
DEPP 6.5.2G(3)**

- 6.11 The Authority does not conclude that Rabobank as a firm engaged in deliberate misconduct. Nevertheless the improper actions of many Rabobank employees involved in the misconduct were at least reckless and frequently deliberate. Rabobank, because of a poor culture within its GL&F Group and weak systems and controls, failed to prevent the deliberate, reckless and frequently blatant actions of its employees.

**The size, financial resources and other circumstances of the firm -
DEPP 6.5.2G(5)**

- 6.12 Rabobank is a large, sophisticated and well-resourced financial services institution. Serious breaches committed by such a firm merit the highest penalties.

The amount of benefit gained or loss avoided - DEPP 6.5.2G(6)

- 6.13 Rabobank Traders sought to manipulate LIBOR submissions in order to improve the profitability of trading positions. The Authority has not determined the amount of benefit gained.

Conduct following the breach - DEPP 6.5.2G(8)

- 6.14 In determining the appropriate level of penalty, the Authority acknowledges the good cooperation provided by Rabobank during the course of the Authority's investigation.

Disciplinary record and compliance history – DEPP 6.5.2G(9)

- 6.15 The Authority notes that Rabobank has not been the subject of previous disciplinary action brought by the Authority. In addition, the Authority notes that, during the Relevant Period, Rabobank raised concerns with the BBA and others about difficulties in calculating what LIBOR submissions to make in some currencies and other related issues.

Other action taken by the Authority - DEPP 6.5.2G(10)

- 6.16 On 27 June 2012, 19 December 2012 and 6 February 2013, the Authority issued Final Notices against Barclays Bank plc ("Barclays"), UBS AG ("UBS") and The Royal Bank of Scotland plc ("RBS") in respect of misconduct similar to Rabobank's misconduct as described in this notice. The Authority has considered Rabobank's misconduct relative to other firms in determining the penalty.

7. PROCEDURAL MATTERS

Decision maker

- 7.1. The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers.
- 7.2. This Final Notice is given under, and in accordance with, section 390 of the Act.

Manner of and time for Payment

- 7.3. The financial penalty must be paid in full by Rabobank to the Authority by no later than 12 November 2013, 14 days from the date of the Final Notice.

If the financial penalty is not paid

- 7.4. If all or any of the financial penalty is outstanding on 13 November 2013, the Authority may recover the outstanding amount as a debt owed by Rabobank and due to the Authority.

Publicity

- 7.5. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
- 7.6. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

- 7.7. For more information concerning this matter generally, contact Patrick Meaney (+44 (0)20 7066 7420), Harsh Trivedi (+44 (0)20 7066 4798) or Seán Duncan (+44 (0)20 7066 1248) of the Enforcement and Financial Crime Division of the Authority.

Matthew Nunan

Project Sponsor

Financial Conduct Authority, Enforcement and Financial Crime Division

ANNEX A

RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND FCA GUIDANCE

8. STATUTORY PROVISIONS

8.1. The Authority's statutory objectives, set out in section 2(2) of the Act, are market confidence, financial stability, consumer protection and the reduction of financial crime.

8.2. Section 206 of the Act provides:

"If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act, it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate."

8.3. Rabobank is an authorised person for the purposes of section 206 of the Act. The requirements imposed on authorised persons include those set out in the Authority's rules made under section 138 of the Act.

9. REGULATORY PROVISIONS

9.1. In exercising its power to issue a financial penalty, the Authority must have regard to the relevant provisions in the FCA Handbook of rules and guidance (the FCA Handbook).

9.2. In deciding on the action proposed, the Authority has also had regard to guidance published in the FCA Handbook and set out in the Regulatory Guides, in particular the Decision Procedure and Penalties Manual (DEPP).

Principles for Businesses ("PRIN")

9.3. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Authority's Handbook. They derive their authority from the Authority's rule-making powers as set out in the Act and reflect the Authority's regulatory objectives. The relevant Principles are as follows:

9.4. Principle 3 provides:

"A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems."

9.5. Principle 5 provides:

"A firm must observe proper standards of market conduct."

Decision Procedure and Penalties Manual (DEPP)

9.6. Guidance on the imposition and amount of penalties is set out in Chapter 6 of DEPP. Changes to DEPP were introduced on 6 March 2010. Given that the majority of the misconduct occurred prior to that date, the Authority has had regard to the provisions of DEPP in force prior to that date.

- 9.7. DEPP 6.1.2 provides that the principal purpose of imposing a financial penalty is to *"promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour."*
- 9.8. DEPP 6.5.2 sets out some of the factors that may be taken into account when the Authority determines the level of a financial penalty that is appropriate and proportionate to the misconduct as follows:
- (1) deterrence;
 - (2) the nature, seriousness and impact of the breach in question;
 - (3) the extent to which the breach was deliberate or reckless;
 - (4) whether the person on who the penalty is to be imposed is an individual;
 - (5) the size, financial resources and other circumstances of the person on whom the penalty is to be imposed;
 - (6) the amount of benefit gained or loss avoided;
 - (7) difficulty of detecting the breach;
 - (8) conduct following the breach;
 - (9) disciplinary record and compliance history;
 - (10) other action taken by the Authority;
 - (11) action taken by other domestic or international regulatory authorities;
 - (12) Authority guidance or other published materials; and
 - (13) the timing of any agreement as to the amount of the penalty.

The Authority has also had regard to the provisions of the Enforcement manual (ENF) in force prior to 28 August 2007, in relation to misconduct which occurred prior to that date.